IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1615 of 2005
With
CRIMINAL MISC.APPLICATION No. 8801 of 2005
In CRIMINAL APPEAL No. 1615 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHORBHAI RAMBHAI SANGHALA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SHAKTISINH GOHIL for Appellant(s) : 1,
MR RC KODEKAR APP for Opponent(s) : 1, 3,
None for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 21/10/2005
CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 374 of the Code of Criminal Procedure is directed against the judgment and order dated 17.6.2005 passed by the learned Additional Sessions Judge, Fast Track Court No.4, Bhavnagar Camp at Mahuva in Sessions Case No.96 of 2004. By the said judgment and order, the appellant-accused is convicted for the offence punishable under Sections 307, 504, 506(2) IPC and sentenced to suffer rigorous imprisonment for a term of 14 years, 2 years and 5 years respectively for the said offences. The appellant-accused is also convicted of the offence punishable under Section 135 of the Bombay Police Act and sentenced to suffer simple imprisonment for 8 months. The sentences are ordered to run concurrently. The appellant-accused is also sentenced to pay fine of Rs.5,000/-, 1,000, 3,000/- and 200/- respectively for the aforesaid offences.

2. The prosecution case is that on 22.2.2004 during night hours, the appellant-accused (hereinafter referred to as “the appellant”) had abused his son and, therefore, Savitaben, wife of the accused had asked the appellant not to abuse their son. Thereupon there was a quarrel between the appellant and his wife and, therefore, the appellant's wife went to the place of her father along with her son and informed them about the incident. On the next evening at about 8.00 PM, the appellant went to his father-in-law's place and started abusing. Thereupon Maniben, appellant's mother-in-law (mother of Savitaben) asked the appellant not

to hurl abuses. The appellant got all of a sudden excited and inflicted knife-blows into the abdomen of his mother-in-law Maniben, with such force that her intestines came out. The appellant then ran away with the knife and also threatened that henceforth it was going to be the turn of the rest of them. Injured Maniben was shifted to the Government Hospital and FIR was lodged against the appellant. The appellant was accordingly charged with the aforesaid offences.

3. The appellant pleaded not guilty and, at the trial, the prosecution examined injured witness PW 2 Maniben (mother-in- law of the appellant), PW 1 Purshottambhai Naranbhai (brother-in-law of the appellant), PW 7 Savitaben Kishorbhai (wife of the appellant), medical witnesses and panch witnesses and the Investigating Officer. However, the prosecution witnesses who were examined as eye-witnesses, (including the appellant's mother in-law, wife and brother-in-law) turned hostile and did not support the prosecution case. The panch witnesses also turned hostile. The defence version as reflected in the cross-examination of the prosecution witnesses was that the mother-in-law of the appellant had fallen down and was hit by a sharp object and, therefore, she had bled and become unconscious.

4. The trial Court held that the complainant and other witnesses had turned hostile and were supporting the case of the appellant because the appellant is the son-in-law of the injured witness, brother-in-law of the complainant and the husband of the daughter of the injured witness, but the appellant himself had filed a cross complaint wherein he

had stated that he had inflicted knife blows on his mother-in-law. A bloodstained knife was also recovered from the appellant. The learned trial Judge convicted the appellant for the offences punishable under Sections 307, 504 and 506(2) IPC and sentenced the appellant to undergo sentence of 14 years, 2 years and 5 years respectively for the aforesaid offences. The appellant was also sentenced to fine of Rs.5000/-, 1000/- and 3000/- respectively for the aforesaid offences. It is against the aforesaid judgment that the present appeal is filed.

5. At the hearing of this appeal, Mr Shaktisinh Gohil, learned advocate for the appellant has submitted that in the facts and circumstances of the case, the appellant does not challenge the order of conviction, but the appellant challenges the order of sentence. It is submitted that since the maximum sentence for the offence punishable under Section 307 is 10 years, the learned trial Judge could not have passed the order for imprisonment for 14 years. The learned counsel has also further submitted that the very fact that the wife, the mother-in-law and brother-in-law of the appellant had all supported the appellant at the time of giving depositions at the trial, clearly indicated that the injured witness herself and her daughter and son had forgiven the appellant and not supported the prosecution case and that the appellant has young minor children. In this set of circumstances, the appellant ought to have been given the benefit of probation.

6. On the other hand, Mr Kodekar, learned APP has submitted that even though the learned trial Judge could

not have imposed sentence of 14 years for the offence punishable under Section 307, there is no justification for taking a lenient view when the appellant had committed the dastardly act of inflicting knife blows on the abdomen of his own mother-in-law with such force that her intestines had come out and that too only because the mother-in-law had told the accused not to give abuses.

7. In the facts and circumstances of the case, the learned counsel for the appellant rightly gave up the challenge to conviction for the offence punishable under Section 307, 504 and 506(2) IPC and Section 135 of the Bombay Police Act because the defence case as indicated in the cross-examination of the prosecution witnesses that injured witness Maniben had fallen down and was hit by a sharp object was clearly negatived by the medical history given by victim Maniben while being admitted to the hospital wherein the injury was shown as “stab wound”. Looking to the nature of injuries, it is not possible to believe that such serious injuries on the abdomen of Maniben could have taken place on account of any fall. The recovery of the knife from the appellant also corroborates the prosecution case. Over and above that, there is clinching evidence in the form of NC complaint filed by the appellant himself to the effect that the members of his in-laws family had got excited and had given the appellant fist blows and, therefore, the appellant had fallen down and sustained injuries on his face and hands and that thereafter he had taken out his knife and inflicted knife blows on the abdomen of the appellant's mother-in-law Maniben and since big crowd had collected the appellant

had run away. The said NC complaint at Exh.56 lodged by the appellant himself also bore his left thumb impression. When the appellant gave such serious knife blows to his mother-in-law, the charge against the appellant that the appellant had threatened to cause the death or grievous hurt to the complainant and other family members would not require any further evidence and the appellant has also been rightly convicted for the offence punishable under Section 504 IPC and Section 135 of the Bombay Police Act.

8. We, however, find considerable force in the submission of the learned counsel for the appellant that when the maximum sentence for the offence punishable under Section 307 IPC is 10 years, the learned trial Judge could not have imposed the sentence of 14 years imprisonment. On this ground alone, the order of sentence passed by the trial Court deserve to be set aside. Even so, coming to the question as to what sentence should be considered as just and proper, in the facts and circumstances of the case, we agree with the learned APP that this is not a case where the appellant should be given the benefit of probation merely because the injured witness herself, who happens to be the appellant's mother-in-law, and her daughter and son (the appellant's wife and brother-in-law) did not support the prosecution case at the trial. It is obvious that they resiled from their version in the police statements only to see that the appellant is not convicted for the offence which was certainly a serious offence but was committed in the heat of the moment and fortunately for all concerned, the injured witness survived on account of the excellent medical treatment that was given to her at the hospital.

9. As regards the quantum of sentence, as already indicated hereinabove, while the appellant does not deserve to be given the benefit of probation, considering the fact that the offence was committed in the heat of the moment, that the victim was the appellant's own mother-in-law who did not support the prosecution at the trial and that the appellant's wife as well as brother-in-law (complainant) also supported the appellant at the trial by resiling from their police statements and that the appellant has young minor children and considering the fact that the appellant is in jail since 24.2.2004, we are of the view that the interests of justice would be served if the appellant is sentenced to suffer rigorous imprisonment for 4 years, 2 years, 1 year and 6 months for the offences for which the appellant is convicted by the trial Court.

10. In the result, the appeal is partly allowed. While the conviction of the appellant for the offences punishable under Sections 307, 506(2) and 504 IPC and for the offence punishable under Section 135 of Bombay Police Act, 1951 is confirmed, the order of sentence passed by the trial Court is modified as under:-

(i) For the offence punishable under Section 307 IPC, the appellant is sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.1,000/- (Rupees one thousand), in default to suffer rigorous imprisonment for six months.

(ii) For the offence punishable under Section 506(2)

IPC, the appellant is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.500/- (Rupees five hundred), in default to suffer rigorous imprisonment for three months.

(iii) For the offence punishable under Section 504 IPC, the appellant is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.300/- (Rupees three hundred), in default to suffer rigorous imprisonment for three months.

(iv) For the offence punishable under Section 135 of the Bombay Police Act, the appellant is sentenced to suffer simple imprisonment for six months and to pay fine of Rs.200/- (Rupees two hundred), in default to suffer simple imprisonment for one month.

All the sentences shall run concurrently.

11. In view of the above order, Criminal Misc. Application No.8801 of 2005 for bail till final disposal of the appeal has become infructuous and is accordingly dismissed as infructuous.

12. The Registrar General shall place a copy of this judgment along with a copy of the impugned judgment before the learned Administrative Judge for the Fast Track Courts in the State.

(M.S. SHAH, J.) (D.H. WAGHELA, J.)

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